K 1943.

File No. O.B.C.S.Rj/43

Legal DEPARTMENT
A BRANCH

Subject:—

Opinions under the Bombay Civil Services Rules.

P.8/E

File No. O.B.C.S.Rj./43.

Stl. Sectt. Slip 24 B e.

455-A

CONTENTS.

Legal Department Vol. No. O.B.C.S.Rs/1943.

S.No.	Compilation No.	Subject	Pages.
		Opinions under the Bombay Civil Services Rules.	
1.	O.B.C.S.Rs./1943 O.No.133-p-Confl. 21-10-43	Re:Acquittal of Mr. C.R.Desai on the grounds that (1) his prosecution had not been sanctioned by Govt. under sec. 197, Criminal Procedure Code and (2) that he had made no statement before the Administrator refusing to work.	
2.	R.I.No.9474/29-9-43 O.No.7094/25-10-43	Re:The conditions of the period of 3 years practice for the purpose of the eligibility of the candidate for the post of a sub-Judge.	3-5
3	Opinion	Question whether the period of 3 years practice should be calculated upto the date of appointment or up to the date fixed for receipt of the application. Amendment of rule 36 (i)(b) of the Bombay Civil Services Classification and Recruitment Rules.	7

Sd/-
14-2-56

xx
xxxxx

S.A.K.
18-4

21/5

21/5

Office of the R.L.A.

Mr. C.R. Desai was acquitted on two grounds: (1) that his prosecution had not been sanctioned by Government under section 197, Criminal Procedure Code and (2) that he had made no statement before the Administrator refusing to work.

Those grounds being purely Technical, Mr. Desai cannot be considered as having been honourably acquitted.

Id/P.R.M.
20/10

Remembrancer of Legal Affairs.

U.R. to P.W.D., No 133-P Confl. dated the 21st October 1943

Mr/20/4

Submitted.

2. Please see Mr.Kulkarni's memorial to H.E. and Secy. H.D.'s note at pp.1-11 and 38-39 ante. The Bom. Sind P.S. Commission by it notification No. 19 dated 4-1-43 advertised posts of Sub-judges in the B.G.G. dated 7-1-43 and the last date for receiving the applications was fixed on the 6th February 1943. It appears that one Mr. D.B. Kulkarni applied for one of the posts on 3-2-43. Calls for interview were issued by the Commission on 16th March 1943 and candidates for the above posts were interviewed on the 6th and 7th April. No call for interview was however sent to Mr. Kulkarni although he had a brilliant academical career and had fulfilled all the conditions under the notification, presumably on the ground that his practise fell short of the required period of 3 years by 22 days on the last date fixed by the Commission for receipt of applications. His contention is that the eligibility for appointments must, upon a plain reading of rule 36(1)(b) in App. C. to the Bombay Civil Services Classification and Recruitment Rules, be determined by reference to the date of appointment and not by reference to the date fixed for receipt of applications. In support of this he has forwarded the opinion of Sir Jamshedji Kanga (p.33 ante) on the interpretation of rule 36 (1)(b) to the effect that the period of 3 years practice should be calculated up to the date of appointment. Secy., H.D. is of the view that this view is correct and that the rule must be modified so that some arbitary date may be fixed up for the purpose of reckoning the 3 years' period. The H.L.A. is

requested to advise in the matter,

3. The B.C.S.C.R. Rules defining the standard of qualifications to Bombay Subordinate Civil Judicial Service although they are made under section 241 of the Govt. of India Act, 1935, are statutory to the extent that they fall under section 255(1) of the said Act (of R.L.A's opinion No. 4186, dated 21.5.42) Under rule 36(i)(b) of these rules 'to be eligible for appointment as a Sub-Hudge a candidate must (amongst other requirements as to age etc.) Ordinarily have practised as an Advocate, or Pleader in the High Court of Bombay or in the Civil Courts subordinate there to for at least 3 years". This rule and notification No.19 issued pursuant thereto by the Bom-Sind P.S. Commission in the B.G.G. dated 7th January 1943 define the conditions under which a person would be eligible for first appointment as a sub-Judge. The word 'ordinarily' does not mean solely or in the main It only means regularly and habitually, not casually. whether it be for a larger or a smaller portion of the day (cf Iyer's Law Lexicon p. 919). It must be taken to mean "except in the cases provided hereinafter to the contrary" (cf 15 Bom L.R. 68; 30; Bom L.R. 387 and 39 Bom L.R. 61) The rule therefore contemplates exceptions which may allow the recruiting authority to depart from the provisions of the said rule in particular cases where a candidate may bot be fufilling all the conditions prescribed thereunder. It is also evident that the words "to be eligible for appointment" in this rule indicate that the important date by which a candidate must fulfill all the conditions is the date of appointment and as rightly

rightly pointed out by Shri Jamshedji Kanga, the eligibility is for appointment and not for application. This is clear from the fact that the domicile of a candidate is to be taken into account at the date of appointment (See lines. 2 and 3 of the Notification No.10) and where a date other than the date of appointment is to be taken into account rule 36 and the notification say so explicitly that the applicant should be more than 21 and less than 30 years of age on the 30th April of the year (seen notifn. No. 10 Cl. I(a). This shows that in matters of qualifications mentioned in sub-rule (1)(b) of the said rule the Commission is given full discretion to decide whether a particular candidate fulfills all the conditions or not.

Mr/20/4

Office of the R.L.A.

The view taken by Sir Jamshed Kanga on the interpretation of rule 36 of the Bombay Civil Service Classification and Recruitment Rules is correct. The R.L.A. agrees with Secretary, Home Department, that the rule requires to be suitably amended by fixing a date from which the 3 years' period should be reckoned.

I.G/P.M.M.

Remembrancer of Legal Affairs.

U.R. to H.D. No. 7094 dated the 25th October 1943

Mr/20/4

O P I N I O N.

I have been asked to give my opinion as to the construction to be put on Rule 36 of the Bombay Civil Services Classification and Recruitment Rules made by the Governor of Bombay under Section 255 of the Government of India Act, 1935. This rule and the notification No. 10 issued pursuant thereto by the Bombay-Sind Public Service Commission in the Bombay Government Gazettee dated 7th January 1943 define the conditions under which a person would be eligible for first appointment as a subordinate Judge. My opinion is especially sought on Cl. I(b) of that Rule.

Is the three years' practice required therein to be calculated on the last date of the receipt of application or on the date of appointment? It is clear that as the Rule and the Notification stand one of two sets of application words will have to be read into them either (1)" at the date of appointment" or (2) "at the date of application".

In my opinion the period should be calculated upto the date of appointment for three reasons:-

(1) The basic requirement that the applicant should be domiciled in the Province of Bombay is to be taken into account at the date of appointment (See lies 2 and 3 of the Notification).

(2) Where a date other than the date of appointment is to be taken into account, the rule and the Notification say, so namely, that the applicant should be more than 21 and less than 30 years of age on the 30th April 1943 (See Notification Cl. I (a)).

(3) The requirement as to 3 years' practice begins thus "To be eligible for appointment as a Sub-ordinate Judge, a candidate must ordinarily have practised as a pleader for at least 3 years". It is indicated that the

really important date is the date of appointment and the eligibility is for appointment and not for application

Dated: 6th April 1943

s&/- E.B.Kenge.

Advocate (O.S.)

Kr/20/4

21/5

21/5